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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

THROWER, LARRY W

ART UNIT	PAPER NUMBER
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1791

NOTIFICATION DATE	DELIVERY MODE
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01/14/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/568,316	Applicant(s) HARNFELDT ET AL.	
	Examiner LARRY THROWER	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed October 7, 2009 has been entered. Claim 12 is amended; claims 1-11 are canceled. Claims 12-18 are under examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 12 and 14-18** are rejected under 35 U.S.C. 102(b) as being anticipated by Marbe et al. (EP 1249399).
 - Regarding **claim 12**, Marbe et al. discloses a method of controllably conveying a web of packaging laminate provided with holes to at least one application station which is disposed to cover the holes with opening arrangements (abstract; fig. 1). The method includes determining an intended indexing distance of the web (D); on the basis of a predefined profile for a second section of the indexing, dividing up indexing of the web into a first section (3a, 3b, 3c) and a second section (5a, 5b, 5c); conveying the web the first section (fig. 1); conveying the web the second section (fig. 1); and during the second section of the indexing of the web, registering an actual position of a premade hole in the web and adapting, on the basis of the registered actual position of the hole, the second section of the indexing of the web

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so that the hole arrives at a correct position in relation to an application station for applying an opening arrangement over the hole (§20).

- Regarding **claim 14**, Marbe et al. discloses the opening arrangement being applied over the hole by injection molding the opening arrangement with molding tools (5a, 5b, 5c) which are disposed to enclose between them in a mold cavity a portion of the web which includes the hole (§22).
- Regarding **claim 15**, Marbe et al. discloses determining on a first occasion, the intended conveying of the web to a first intended indexing distance (§§29-30; 13R; fig. 1) and, on a second occasion, determining the intended conveying of the web to a second intended indexing distance (1R) which is separate from the first distance, dividing, on the basis of the same predefined profile, the first intended indexing distance (13R) and the second intended indexing distance (1R) each into a set of first (3a, 3b, 3c) and second sections (5a, 5b, 5c) of the indexing, the intended second section of each respective intended indexing distance being formed equally (1R) and the first section of each respective intended indexing distance being formed differently (13R) so as to achieve different total intended indexing distances (§30).
- Regarding **claim 16**, Marbe et al. discloses a first total indexing being realized so that the web is accelerated (from zero at startup) and retarded (stopped to punch the holes) (§29).
- Regarding **claim 17**, Marbe et al. discloses the retardation (to punch the holes) in the first section of the indexing continuing until a predetermined position (bar code

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C) has been realized, whereafter the web is run along a predetermined distance before the second section of the indexing is commenced (§§21 and 25).

- Regarding **claim 18**, Marbe et al. discloses a second total indexing being attained in that the web is accelerated until a predetermined position (of second indexing holes 4; §21) has been achieved, whereafter the web is driven along a predetermined distance before the second section of the indexing is commenced (§21).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over Marbe et al. (EP 1249399), as applied to claim 12 above.
- Marbe et al. discloses predefining the profile of the second section of the indexing so that the position of the hole is registered during the second section of the indexing of the web (§20), but is silent as to whether the registration is during the acceleration or retardation phase of web. However, whether regardless of which speed phase the registration occurs, the end result of registering the hole and controllably locating the hole inside the respective mold cavity of the molding station, as taught by Marbe et al. (§§20-21), would be the same. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have registered the

hole during any speed phase because the end result of registering the hole and controllably locating the hole inside the respective mold cavity of the molding station would be the same, as suggested by Marbe et al.

Response to Arguments

6. Applicant's arguments filed August 24, 2009 have been fully considered but they are not persuasive.
- Applicant argues that the two sections of Marbe et al. are not the two sections recited in instant claim 12 because instant claim 12 requires "sections of **a single** feed step or indexing step, i.e., 'the intended indexing distance,' and thus refer to actions **within one single** feed or indexing of the web" (emphasis added). This argument has been considered but is not persuasive because is not commensurate in scope with what has been claimed. The instant claims do not require sections of a *single* feed or indexing step. That is, there is no requirement in the claims that the two sections be limited to a single step. The Federal Circuit has repeatedly emphasized that the indefinite articles "a" and "an" in a claim carry the meaning of "one or more" in open-ended claims containing open-ended transitional phrases. See, e.g., *Baldwin Graphic Systems v. Siebert* (Fed. Cir. 2008). Such is the case here. The transitional phrase is open-ended and the claims recite "an intended conveying or indexing distance." Since the initial indefinite article ("an") carries either a singular or plural meaning, the later references to the same intended indexing distance in a singular form merely reflect the same potential plurality of

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intended indexing distances. Here, the instances of "the intended indexing" and "the indexing" in claim 12 are anaphoric phrases, referring to the initial antecedent phrase "an intended conveying or indexing distance." Because the initial phrase carries no definitive numerosity, the anaphoric phrases do not alter that meaning in the slightest. Applicant has failed to distinguish the language of the claims over the teachings of the prior art.

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LARRY THROWER whose telephone number is 571-270-5517. The examiner can normally be reached on Monday through Friday from 9:30AM-6PM est.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina A. Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Larry Thrower/
Examiner, Art Unit 1791

/Christina Johnson/
Supervisory Patent Examiner, Art Unit 1791